vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6502 OF 1997

The Municipal Corporation of
Greater Mumbai ... Petitioner

V/s.

Shri Keshav Eknath Pophale ... Respondent

Mr.A.Y. Sakhare with Smt.Nisha Dabhade for Petitioner
Mr.Neel Helekar for Respondent

a/w

WRIT PETITION NO.4221 OF 1998

Keshav Eknath Pophale ... Petitioner

V/s.

Municipal Corporation of Gr.Mumbai ... Respondent

Mr.Neel Helekar for Petitioner
Mr.A.Y. Sakhare with Smt.Nisha Dabhade for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 3, 2007**

ORAL JUDGMENT:

. These two petitions challenge the order of the Labour Court decided on 21.7.1997. The Labour Court had directed the Municipal Corporation which is the petitioner in Writ Petition No.6502 of 1997 to pay to the workman who is the petitioner in Writ Petition No.4221 of 1998 and Respondent in W.P. No.6502 of 1997 a sum Rs.55,238/- and costs of Rs.1000/-. This amount was towards pay and allowances, difference of revised gratuity and personal cash. The main contention of the

corporation in its petition is that the workman was not entitled to any relief under section 33C-2 as the claims made by him were on the basis that he disputed his superannuation w.e.f. 1.10.1986. It is submitted that the Labour Court had no jurisdiction u/s 33C(2) of the Industrial Disputes Act to decide as to whether the order of superannuation passed by the Municipal Commissioner on 1.11.1988 was valid and proper.

2. The workman was employed by the Corporation as a Junior Pay Master in the Chief Accountant's Office. The Corporation received a complaint against the workman from the Security Assistant on 9.10.1984 to the effect that on the day of distribution of salary, some outsiders were collecting wages in the name of the employees. Due to this, the workmen who were entitled to wages were not being paid. The premises where payments used to be made to the badli kamgars were raided on 10.10.1984. It was found that the workman was in possession of excess cash. On 7.3.1985, the workman was suspended from work. He was paid subsistence allowance in accordance with the Rules. The workman was to retire w.e.f. 1.10.1986. However, the workman was not permitted to retire on that date. No enquiry had commenced although the workman was under suspension right from 1985. The workman applied to the Municipal Commissioner on 31.8.1988 to permit him to retire from

the date of superannuation i.e., 1.10.1986. The workman pointed out that the preliminary investigations in the matter were not completed even in the year 1988 and, therefore, to avoid any further mental torture, he requested that his case be considered sympathetically by allowing him to retire on 1.10.1986 which was the date of his superannuation. He had also requested that the action instituted against him be dropped and all retirement benefits be paid to him accordingly. He also requested that the period of suspension from 7.3.1985 to 30.9.1986 be treated as if he was on duty. The letter also mentions that the workman had no objection to recover and adjust subsistence allowance paid to him from 1.10.1986 onwards from the pension and other retiral dues. The Municipal Commissioner on the basis of the letter issued an order on 1.11.1988 accepting the application of the workman and permitting him to retire from municipal service on his due date of superannuation i.e., 1.10.1986 by dropping the disciplinary action initiated against him.

3. Admittedly, the workman was paid all his legal dues in accordance with the order of 1.11.1988. On 3.1.1990, the workman addressed a letter to the Commissioner contending that he was coerced into submitting the application dated 31.8.1988 and he had no intention to forego any claims. He contended that the

Chief Inspector Enquiries had directed him to sign the application. The workman therefore requested the Corporation to pay certain amounts due and payable to him including pay and allowances and personal cash besides interest @ 18%. Reminders were sent by him on 16.2.1999 and 28.3.1999 to the Municipal Commissioner for payment of the dues claimed by him.

4. The workman then filed an application u/s 33C(2) of the Industrial Disputes Act on 11.6.1990 since his claim was not conceded by the Corporation. In its written statement the Corporation contended that the workman was not entitled to maintain the application as the Labour Court had no jurisdiction to try it. The Corporation pointed out that the effect of the order of the Municipal Commissioner could not be considered by the Labour Court u/s 33C(2).

5. Evidence of both the parties was led before the Labour Court. The Labour Court by its impugned order has held that the workman was entitled to Rs.40,222.90 as pay and allowances, Rs.13,044 as difference in revised gratuity and Rs.1971/- as personal cash totalling to Rs.55,238/-. When these petitions were admitted, this Court had directed the Corporation to deposit the amount due and payable under the recovery certificate issued by the Commissioner pursuant to the

order passed u/s 33C-2. The workman was permitted to withdraw the amount after furnishing an undertaking that in the even this petition was dismissed, he would refund the amount with 12% interest.

6. The learned Counsel appearing for the Corporation points out that the entire case of the workman before the Labour Court was based on his contention that the application made by him on 31.8.1988 for being retired on 1.10.1986 was not voluntary and that the consequential order passed by the Municipal Commissioner was illegal. According to the learned Counsel, this contention of the workman could not have been considered by the Labour Court in its jurisdiction u/s 33C-2 under which only benefits which a workman is entitled to can be claimed. The learned Counsel relies on the judgment of the Division bench of this Court in the case of *Mahalaxmi Co-operative Housing Society Ltd. v/s. Dilip Singh Parocha & Ors.*, **2007(1) Bom.C.R. 798** and of a learned Single Judge of this Court in *Getwell Board & Paper Pvt. Ltd. v/s. Fakruddin S. Lokhandwala & Anr.*, **2007(1) Mh.L.J.246.** The Division Bench has culled out the propositions of law which emerged from the various judgments cited before it, as to what is nature of the application filed u/s 33C-2 which could be decided by the Labour Court. The learned Counsel for the Corporation submits that the

propositions (i) and (j) would be applicable in the present case. It would be of assistance to reproduce those propositions.

40. From the judgments of the Supreme Court and of this court to which we have made a reference following propositions emerge:

a) The legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights and so it inserted section 33-C in the said Act in 1956. By resorting to section 33-C individual workmen can enforce their rights without having to take recourse to section 36 10(1) of the said Act or without having to depend upon their union to espouse their cause.

b) There is no bar preventing a Labour Court dealing with an application under section 33-C(2) of the said Act from determining the workmen’s right to receive benefit if it is disputed by the employer.

c) This view is consistent with the legislative intent and a contrary view would mean that it would be at the option of the employer to allow the workmen to avail himself of the remedy provided by sub-section (2) of section 33-C because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court, to entertain the workman’s application.

d) In some cases determination of the question about computing the benefit in terms of money may have to be preceded by an enquiry into the existence of the right, and such an enquiry must be help to be incidental.

e) Whether such inquiry is incidental or not will depend on the facts and circumstances of each case.

f) When Labour Court’s jurisdiction is sought

to be ousted by raising objection to it, the Labour Court will have to examine whether it has jurisdiction or not. In such a situation the question of status of the person applying under section 33-C(2) becomes an incidental matter and the Labour Court can enquire into that matter.

g) In a given case it may be necessary to determine the identity of the person against whom the claim is made if there is challenge and such determination would be incidental.

h) Interpretation of an Award or a Settlement on which the workman's right exists is incidental to the Labour Court's power under section 33-C(2).

i) Under section 33-C(2) the Labour Court cannot be asked to disregard the dismissal of the workman as wrongful and on that basis compute his wages.

j) Under section 33-C(2) the workman cannot claim that his dismissal or demotion is unlawful and, therefore, he continues to be the workman of the employer and he is entitled to the benefits due to him under a pre-existing contract.

k) ..
l) ..
m) ..
n) ..

7. There is a letter issued by the workman dated 13.8.1986 which is an application for discontinuing the enquiry proceedings and for permission to retire from the date of superannuation. Consequent upon this application being submitted, the Municipal Commissioner conceded to the request. The Commissioner dropped the enquiry initiated against the workman and directed that he be treated as retired on the date when the workman

attained the age of superannuation i.e., on 1.10.1986. It would not therefore have been proper for the Labour Court to decide whether the order of the Commissioner dated 1.11.1988 was legal and proper. Without a decision on this issue, the Labour Court could not have granted any relief in the application. In my view, when there is a dispute between the parties as to whether the services could have come to an end on 1.10.1986 or whether they were continued upto 7.12.1988, it is not for the Labour Court u/s 33C(2) to decide this issue as an incidental issue. All the claims have been made by the workman contending that his services have been terminated illegally from 1.10.1986 and that therefore he was entitled to the claims made by him on the basis that he continued in service upto 1.11.1988. As rightly pointed out by the learned Counsel for the Corporation, the propositions (i) and (j) would be applicable to the facts and circumstances of the present case. The Labour Court could not have usurped the jurisdiction available to the Court u/s 10 of the Industrial Disputes Act to decide as to whether there was in fact a legal and valid termination of service on 1.11.1988. At best, the Labour Court could have considered as to whether the application submitted by the workman on 31.8.1988 was made by him, voluntarily by him.

8. In my opinion, therefore, the decision of the

Labour Court is erroneous and therefore needs to be set aside in respect of all the claims granted by it except the claim for personal cash. Undisputedly, the workman has been paid full wages upto 1.10.1986 although he was earlier on suspension upto that date. In such circumstances, the impugned order is set aside. However, the workman is entitled to Rs.1971/- as his personal cash from the Corporation. Further, it appears that subsistence allowance paid to the workman from 1986 to 1988 has been recovered from him by the Corporation. However, in the facts and circumstances of this case and not by way of a precedent, the amount paid to the workman from 1.11.1986 to 8.12.1988 as subsistence allowance shall not be recovered from the workman because in fact he was on suspension during this period. However, it is made clear that the workman would not be entitled to full wages during this period.

9. The order of the Labour Court is set aside. Writ Petition No.6502 of 1997 is made absolute. Rule issued in Writ Petition No.4221 of 1998 is discharged. No order as to costs.